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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of RAGHAVENDRA  
LAXMIKANTH and SRUJANA  
TANGEDA.

H044550  
(Santa Clara County  
Super. Ct. No. 6-14-FL-013286)

RAGHAVENDRA LAXMIKANTH,

Respondent,

v.

SRUJANA TANGEDA,

Appellant.

Srujanta Tangeda (Wife) appeals from an order granting a new trial to Raghavendra Laxmikanth (Husband) in this dissolution action involving division of property and breaches of fiduciary duty. For the reasons explained here, we conclude Husband has met his burden on appeal of showing a statutory basis for a new trial. We will therefore affirm the order.

**I. BACKGROUND**

Husband filed for dissolution of his six year marriage to Wife in the Santa Clara County Superior Court in September 2014. The parties are Indian citizens who, after obtaining advanced degrees in the United States and marrying in India, returned to this country to work. Wife was employed in California, and Husband worked for an IT consulting firm (KSOFIT) based in Chicago. In 2009 Husband and Wife rented an

apartment in Santa Clara, and Husband travelled to job sites for work. The parties' only child was born in 2013.

On July 31, 2014, Wife contacted the police following a domestic violence incident with Husband. Husband was arrested, and Wife obtained a domestic violence restraining order. The order, which protected Wife and the parties' daughter, was extended to five years after a hearing in January 2015 in which Husband was found not credible.

In July 2015, Wife asserted claims of breach of fiduciary duty under Family Code section 1101. She alleged Husband had transferred \$424,715 of community funds to India without her knowledge or consent before separation. Husband had withdrawn an additional \$45,000 from the parties' joint savings account in 2015, which Wife believed had also been transferred to India. She alleged the withdrawal violated the automatic temporary restraining order enjoining parties to a dissolution from transferring, concealing, or disposing of any property without the other party's consent. (Fam. Code, § 2040, subd. (a)(2).) She sought reimbursement for the undisclosed transfers, attorney's fees, and sanctions. The parties' joint savings account, with a remaining balance of \$123,000, was frozen.

Wife's breach of fiduciary duty claims were made on the heels of a family court action filed in India seeking division of marital property located in that country. The petition in that case was filed by Wife's father acting as her power of attorney and named as respondents Husband, Husband's parents, and four banks located in India. It included a schedule of bank accounts and fixed deposits,<sup>1</sup> some held jointly by Husband and Wife, but the vast majority held jointly either by Husband and his mother or by his parents. The petition identified gifts, jewelry, and two real estate parcels. In May 2015 the Indian

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<sup>1</sup> Fixed deposits in India are the equivalent of certificates of deposit in the United States.

family court issued a temporary injunction freezing the Indian bank accounts and restraining alienation of the other property.

According to Husband, he was left without representation in September 2015 because he could not pay for an attorney without access to funds. He hired counsel to represent him at the February 2016 trial setting conference, but he could not afford to retain her. He hired a different attorney in late March 2016 who unsuccessfully sought to continue the trial.

A three-day trial was held in April 2016. Husband's attorney withdrew at the beginning of the second day, explaining that neither he nor the case were ready for trial. Husband agreed to proceed without an attorney, and he was cautioned by the court not to expect special treatment. Husband responded that he was unfamiliar with court procedures but would try his best.

Both parties called accounting experts who provided differing opinions regarding the amount of community earnings Husband had transferred to a State Bank of India (SBI) account (jointly held by Husband and his mother) during the marriage. Husband's calculation was \$195,045; Wife's was \$364,815. Husband and Wife testified regarding the extent of Wife's knowledge and consent to the transfers and Husband's \$45,000 post-separation withdrawal from the parties' joint savings account. Husband testified (and attempted to present evidence) as to the source of various transfers.

Evidence was also introduced regarding the characterization and source of funds used to purchase two parcels of real property in India during the marriage. Husband objected on the ground that the family court in India was handling the division of property located in that country, and Wife could not claim her interest in property located in India in both the California court and the Indian court. The trial court assured the parties that it would not issue a ruling or "have anything to do with" the personal and real property in India. Husband acknowledged that one of the real estate parcels (Plot 39 deeded to Husband) was purchased with transferred community funds, but he maintained

that the other parcel (Plot 79 deeded to Husband and Husband's mother) was purchased by his parents with their money.

Wife argued that Husband had a business in India. She introduced Husband's Indian tax return for assessment year 2010–2011 showing a proprietary business described as “real estate commission” in Husband's name as of March 31, 2010. The return showed 7,926,000 rupees (\$176,232)<sup>2</sup> in “proprietor's capital,” 7,500,000 rupees of which was identified as fixed assets. The tax return showed a net profit of 400,000 rupees (\$8,894) from the business, plus 14,000 rupees (\$311) in separate interest income, and earnings of 400,000 rupees (\$8,894) from Virinchi Technologies (KSOF's parent company) for consultant services rendered in 2009. Husband testified that his father filed the return as his power of attorney, his father was a realtor, the capital was his father's separate property, the interest income was from his parents' fixed deposits to which his name had been added, and he had no business in India. Husband's Indian tax return for assessment year 2011–2012 showed 125,000 rupees (\$2,803) interest income and 25,000 rupees (\$561) other income. His 2012–2013 return showed 203,823 rupees (\$4,007) in interest and 100,000 rupees (\$1,966) in other income. He declared 435,571 rupees (\$8,019) interest income on his 2013–2014 Indian tax return.<sup>3</sup> He stated the income was on fixed deposits owned by his parents on which he was made an additional account holder.

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<sup>2</sup> The Indian rupee to U.S. dollar exchange rate on March 31, 2010 was 1 INR to .02224 USD. (<https://www.exchange-rates.org/HistoricalRates/A/INR/3-31-2010> [as of December 26, 2018], archived at: <https://perma.cc/8MB6-KXEC>.)

<sup>3</sup> The Indian rupee to U.S. dollar exchange rate on March 31, 2011 was 1 INR to .02242 USD. (<https://www.exchange-rates.org/HistoricalRates/A/INR/3-31-2011> [as of December 26, 2018], archived at: <https://perma.cc/EWQ8-8CJY>.) On March 31, 2012 it was 1 INR to .01966 USD (<https://www.exchange-rates.org/HistoricalRates/A/INR/3-31-2012> [as of December 26, 2018], archived at: <https://perma.cc/59P3-KBXU>), and 1 INR to .01841 USD on March 31, 2013 (<https://www.exchange-rates.org/HistoricalRates/A/INR/3-31-2013> [as of December 26, 2018], archived at: <https://perma.cc/2ET3-CSEN>).

The court entered an order in August 2016 awarding Wife \$424,815 under Family Code section 1101, subdivision (h) for Husband's breaches of fiduciary duty and \$45,000 for Husband's violation of the automatic temporary restraining order. The court found that Husband had purchased real property in India with community funds, and it ordered the community interest in the properties be divided equally. In addition, it awarded Wife the full purchase price of the properties (\$115,000 for Plot 39 and \$83,535.55 for Plot 79). The court adjudicated the parties' interests in bank accounts, personal property, and a life insurance policy. It ordered Husband to pay Wife \$108,575 in attorney's fees and costs, and an additional \$25,000 in sanctions under Civil Code section 3294 (exemplary damages for oppression, fraud, or malice) and Family Code section 271 (for uncooperative conduct).

Husband retained new counsel who moved for a new trial, arguing that insufficient evidence supported the amount of community earnings transferred to India, the breaches of fiduciary duty, and exemplary damages; that denying Husband's requests for a trial continuance was an abuse of discretion; and that the court erred by exercising jurisdiction over property in India, by finding the wrong date of separation, and by making mathematical mistakes. The motion was supported by declarations from Husband, his accounting expert, his attorney, his father, his legal counsel in India, and friends who, while living in the United States, had given Husband money to send to India. Wife argued that Husband had purposefully sought to delay the trial through his failure to retain an attorney and continuance requests. She argued that Husband was not credible and that sufficient evidence supported the court's findings.

Ruling from the bench at the conclusion of the hearing, the court granted Husband a new trial. The court noted it had "spent a lot of time with [Wife's] papers," but "[Husband's] papers persuaded me that I may not have gotten things right so for the second time in 12 years on the bench I'm granting the motion for a new trial." A minute

order was entered reflecting the ruling, and the court later signed and filed an order granting a new trial prepared by Husband's attorney.

## **II. DISCUSSION**

### **A. THE NEW TRIAL ORDER WAS TIMELY**

The power of the trial court to grant a new trial is prescribed by statute. Under Code of Civil Procedure section 660, a court's authority to rule on a motion for a new trial expires 60 days from and after the mailing of the notice of entry of judgment. Section 660 further provides that a new trial motion "is not determined ... until an order ruling on the motion (1) is entered in the permanent minutes of the court or (2) is signed by the judge and filed by the clerk." The statute continues: "The entry of a new trial order in the permanent minutes of the court shall constitute a determination of the motion even though such minute order as entered expressly directs that a written order be prepared, signed and filed. The minute entry shall in all cases show the date on which the order actually is entered into the permanent minutes, but the failure to comply with this direction shall not impair the validity or effectiveness of the order." (*Ibid.*)

Wife argues that the order granting a new trial is void for lack of jurisdiction because it was signed and filed more than 60 days after service of the notice of entry of judgment. Notice of entry of judgment was mailed on October 26, 2016, and Wife directs us to the order granting Husband's motion signed by the trial court on December 28, 2016 and filed by the clerk the following week. But the court had also generated a minute order noting that the motion was argued and granted. Husband describes the minute order in his briefing as being located in the court's file where it had been since December 22, 2016, and he argues the minute order satisfies the jurisdictional requirements of section 660. Wife counters in reply that the minute order was not filed, served on the parties, or reflected on the court's register of actions, and she was unaware it existed.

In *Hollister Convalescent Hospital v. Rico* (1975) 15 Cal.3d 660, the California Supreme Court identified “three elements essential to the entry of an order in the permanent minutes—to wit, preparation of a written order, recordation of its date and substance in a permanent record, and delivery to the custodian of records.” (*Id.* at p. 671.) Wife does not dispute Husband’s representation that the order was located in the court file. The order does not contain the date it was entered into the permanent minutes, but the register of actions shows a case management conference and hearing on the new trial motion both set on December 21, 2016 at 9:00 a.m., the reporter’s transcript for the hearing shows case management matters were addressed following the motion, and an amended order moving the new trial setting from January 24 (the date announced at the hearing) to January 23 was served on the parties on December 22.

Government Code section 69844 mandates that the clerk of the superior court “keep the minutes and other records of the court,” and enter the minutes “forthwith if no time is specified.” “An oral pronouncement of the judge, followed by a minute entry reciting the nature of the motion and adding ‘Motion Granted’ or ‘Motion Denied,’ is a typical method of deciding motions.” (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 46, p. 583.) The clerk’s performance of official duties “is cloaked with the presumption of regularity.” (*People v. Delgado* (2008) 43 Cal.4th 1059, 1070.) Applying that presumption, and in the absence of any showing by Wife that the minute order was not entered forthwith, we consider the minute order to have been prepared and entered into the court’s permanent record contemporaneous with the hearing on December 21. Having been entered within 60 days after the October 26 notice of entry of judgment, the minute order constitutes a timely ruling on the new trial motion.

## **B. THE NEW TRIAL ORDER WAS PROPER**

### **1. Legal Principles**

Under Code of Civil Procedure section 657, a new trial may be granted when the substantial rights of the moving party are materially affected by “[i]rregularity in the

proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion” preventing a fair trial (*id.*, subd. (1)), and when “the verdict or other decision is against law.” (*Id.*, subd. (6).)<sup>4</sup> A decision is against law under subdivision (6) if it is unsupported by any substantial evidence such that a directed verdict would have been justified against the party in whose favor the verdict was returned. (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906.)

Code of Civil Procedure section 657 directs the trial court to specify the grounds upon which a new trial motion is granted and its reasons supporting each ground. Significantly here, when the trial court does not state the grounds for granting a new trial, the burden of persuasion on appeal is on the party granted the new trial “ ‘to advance any grounds stated in the motion upon which the order should be affirmed, and a record and argument to support it.’ ” (*Oakland Raiders v. National Football League* (2007) 41 Cal.4th 624, 641.) In the absence of a statement of reasons, the appellate court reviews a new trial order independently, without deference to the trial court’s decision. (*Id.* at p. 640 & fn. 4.) The reviewing court must affirm the new trial order if it is supported by any ground stated in the motion except for insufficiency of the evidence or inadequate or excessive damages. (Code Civ. Proc., § 657; *Sanchez-Corea v. Bank of America, supra*, 38 Cal.3d at p. 905 [“An appellate court cannot affirm on grounds of insufficiency of the evidence or of inadequate or excessive damages unless such ground is stated in the new trial order.”].)

## **2. Analysis**

Husband argues that a new trial should be granted because of irregularities in the proceedings, insufficient evidence, lack of any evidence to support certain findings, and

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<sup>4</sup> Further grounds for granting a new trial are: newly discovered evidence, jury misconduct, accident or surprise, and error in law occurring at trial materially affecting the aggrieved party. (Code Civ. Proc., § 657, subds. (2)–(4), (7).) A new trial may also be granted to remedy excessive or inadequate damages. (*Id.*, subd. (5).)



legal errors. Constrained by the limitations of Code of Civil Procedure section 657, we will address the irregularities depriving Husband of a fair trial and legal errors resulting in a decision that is against law.

**a. Trial irregularities (Code Civ. Proc., § 657, subd. (1))**

Irregularities in the proceeding resulted from the trial court's disparate handling of the parties' evidence. Husband proffered letters from three friends attesting to Husband having transferred to India over \$65,000 on their behalf, and a letter from SBI showing that the sources of two deposits (the equivalent of \$40,650 on December 2, 2013 [2,500,000 rupees] and \$4,500 on April 11, 2014 [30,000 rupees]) originated in India, not the United States. The court rejected the letters as hearsay, while at the same time accepting Wife's accounting expert's hearsay testimony that the December 2 and April 11 SBI deposits (and a third deposit on May 18, 2013 for \$32,000) originated in the United States and were community property. Wife's expert testified that he was relying on a report from an accountant in India. He acknowledged the report could be wrong, he was merely assuming the transfers were from a U.S. bank account, and he did not know the source or characterization of the funds. It was fundamentally unfair to accept Wife's hearsay evidence attributing several thousand dollars to community earnings, while rejecting Husband's hearsay evidence attributing tens of thousands of dollars to non-community sources. The inconsistent rulings prejudiced Husband. When Husband agreed to represent himself on the second day of trial, he could not have contemplated having his evidence summarily rejected.

We also find irregularity in Wife's attorney mischaracterizing Husband's expert's report as showing community withdrawals from Husband's bank accounts exceeding one million dollars. Husband's expert testified that some community earnings were transferred multiple times between the parties' U.S. bank accounts, so that the total figure exceeded the actual community earnings during the marriage. Yet the court relied on Wife's misrepresentation attributing nonexistent money to undisclosed community

earnings to discredit Husband and support its attorney's fees and sanctions award. This was a significant misrepresentation which prevented Husband from receiving a fair trial.

**b. Legal errors (Code Civ. Proc., § 657, subd. (6))**

A new trial is warranted because several components of the court's decision are contrary to law. (Code Civ. Proc., § 657, subd. (6).) The legal errors we address here are not necessarily exhaustive, but they suffice as a basis to affirm the new trial order.

First, Husband made a \$60,000 transfer to the SBI account before he and Wife were married, and Wife's expert acknowledged having mistakenly characterized those funds as community earnings. Yet the court identified that very transfer as a breach of Husband's fiduciary duty and awarded that amount to Wife. Second, Husband entered into evidence an email sent to Wife in May 2012 informing her that a transfer amounting to 1,688,310 rupees had been made to the SBI account, and the funds had in turn been transferred to a fixed deposit account jointly owned by Husband and Wife. Wife acknowledged having received the email. The transfer matched a May 2012 \$32,000 transfer (the equivalent of 1,688,310 rupees)<sup>5</sup> identified by Wife's expert and also matched a fixed deposit identified on Wife's schedule of properties provided to the Indian family court. That transfer was also used to support a breach of fiduciary duty claim, but the movement of funds from one joint account and to another joint account, especially as here with full disclosure and knowledge, does not impair any interest in the community estate. (Fam. Code, § 1101, subd. (a) [a breach of fiduciary duty must "result[] in impairment to the claimant spouse's present undivided one-half interest in the community estate"].)

Legal error is also reflected in the court awarding Wife almost \$200,000 as reimbursement for Husband's purchase of the India properties with community funds,

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<sup>5</sup> The rupee to dollar exchange rate on May 31, 2012 was 1 INR to .01783 USD. (<https://www.exchange-rates.org/HistoricalRates/A/INR/5-31-2012> [as of December 26, 2018], archived at: <https://perma.cc/J5DM-93YQ>.)

and awarding her a 50 percent interest in the properties in addition to the full value of the community funds used for their purchase. In its statement of decision, the court attributed \$115,000 of transferred community funds to the purchase of Plot 39 and \$83,535.55 of transferred community funds to the purchase of Plot 79. The court awarded Wife the full value of the purchases (\$115,000 plus \$83,535.55) for Husband's failure to disclose, even though Wife did not assert a breach of fiduciary duty as to the real property purchases. But even if she had, Family Code section 1101 does not allow recovery both for the undisclosed transfers and for the resulting acquisitions using the transferred funds. In *In re Marriage of Schleich* (2017) 8 Cal.App.5th 267 (*Schleich II*), this court explained that when a claimant spouse receives an amount equal to 50 or 100 percent of an undisclosed asset under Family Code section 1101, it is no longer a community asset to divide. (*Schleich II*, at pp. 286–287.) Thus, if Wife recovers under Family Code section 1101, subdivision (h) for the undisclosed transfer of community funds used to purchase the Indian real estate (Plots 39 and 79), she no longer has a community interest in the same property.

**c. Burden on appeal**

Wife argues that Husband has failed to meet his burden of persuasion on appeal. Her argument is largely procedural. She complains that Husband has waived arguments in this court by failing to provide legal authorities and proper record citations, has inappropriately incorporated his motion for a new trial into his appellate briefing, and has failed to provide an adequate record for this court to evaluate his arguments. Although respondent's appendix is poorly indexed and difficult to search, Husband has provided us with an ample record demonstrating grounds for a new trial.

Regarding Wife's complaints of procedural irregularity, we emphasize that we are independently reviewing the decision of a family court, which is a court of equity. (*In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 811.) Husband's new trial motion identified several problems with evidentiary rulings, the scope of proceedings, and

findings affecting the distribution of several hundred thousand dollars. We will not disregard errors of such magnitude merely because the details of the new trial motion were not precisely set forth anew in Husband's appellate briefing.

We have considered the arguments Wife raised in the trial court in opposition to the new trial motion, and they do not convince us that Husband received a fair trial or an equitable resolution. For example, in defending the award of \$60,000 under Family Code section 1101 subdivision (h) for Husband's transferring separate funds acquired before marriage, Wife argued that the funds were comingled and Husband cannot show that the \$60,000 remains in his account. But Wife was not awarded a bank account with comingled funds as part of the division of assets; she was awarded the money as a remedy for breach of fiduciary duty, which requires impairment of the non-breaching spouse's community interest. (*Schleich II, supra*, 8 Cal.App.5th at p. 279.) Wife also argued the \$115,000 for the purchase of Plot 39 was not double counted because there was no single transfer of funds for \$115,000, and Husband could not prove that "any transfers would equal up to \$115,000 for the purchase of said plot."<sup>6</sup> Wife's argument ignores the stated jurisdictional basis for the award being that the funds used to purchase the properties were community funds directly transferred from the parties' joint American accounts. Wife thus recovered her interest in the property three times: She received an award reflecting the community funds transferred to India (\$424,815), plus a separate award of \$115,000 for the undisclosed purchase, plus her community interest in

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<sup>6</sup> The purchase price of the property is unclear on this record. Husband testified that he transferred \$115,000 in community funds to purchase Plot 39. But Wife's father filed an affidavit in the family court in India attesting that Plot 39 was purchased for 1,900,000 rupees in November 2011 (approximately \$36,400; the Indian rupee to U.S. dollar exchange rate on November 30, 2011 was 1 INR to .01915 USD. <https://www.exchange-rates.org/Rate/INR/USD/11-30-2011> [as of December 26, 2018], archived at: <https://perma.cc/36Q8-YK2Y>) and Plot 79 was purchased in October 2013 for 47,00,000 rupees (approximately \$76,300; the exchange rate on October 31, 2013 was 1 INR to .01620 USD. <https://www.exchange-rates.org/Rate/INR/USD/10-31-2013> [as of December 26, 2018], archived at: <https://perma.cc/V94J-Z6MF>).

the same property. We agree with the trial court that it “didn’t get it right,” and we will uphold the new trial order.

**d. Husband’s motion to augment the record**

Respondent’s appendix includes excerpts from the April 2016 trial transcript filed in support of Husband’s new trial motion. Husband alerted us in his brief that he intended to augment the record with the reporter’s transcript of the entire proceeding to comply with California Rules of Court, rule 8.130, and he filed a motion to augment the record with the complete transcript after briefing had concluded. Wife opposed the motion, arguing that she relied on the appellate record as provided by Husband when she wrote her reply brief, and she would be prejudiced by the late augmentation containing significant additional evidence. We granted Husband’s motion after oral argument, and invited Wife to file a supplemental reply brief to address the augmented record, which she has done. In arguing that the evidence was sufficient to support the trial court’s findings, Wife’s supplemental reply brief largely focuses on Husband’s pattern of uncooperative behavior and lack of credibility. None of her supplemental arguments or citations to the augmented record remedy the errors and irregularities discussed above.<sup>7</sup>

**III. DISPOSITION**

The order granting a new trial is affirmed. Husband is awarded costs on appeal.

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<sup>7</sup> We deny Wife’s request for additional oral argument. The court’s invitation for supplemental briefing did not contemplate further argument.

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Grover, J.

**WE CONCUR:**

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Greenwood, P. J.

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Premo, J.

**H044550 - *Laxmikanth v. Tangeda***